

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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U.S. DEPT. OF JUSTICE

Complaint of Douglas Ralph Saint, Patricia
Ann Braun, M.D., and Jonathan Cromwell
Saint, COMPLAINANTS

Docket No. C99-2

ANSWER OF THE UNITED STATES POSTAL SERVICE AND
MOTION TO DISMISS AS MOOT
(February 11, 1999)

INTRODUCTION AND BACKGROUND

On January 12, 1999, the Postal Rate Commission received a letter attaching a document captioned "Complaint" filed by Douglas Ralph Saint; Patricia Ann Braun, M.D.; and Jonathan Cromwell Saint, Complainants. By letter dated that same day, the Office of the Secretary, Postal Rate Commission, designated the docket number above and advised the General Counsel, United States Postal Service, of the Complaint's filing under title 39, United States Code § 3662.¹

The gravamen of the Complaint is "an individual, localized, or temporary service issue not on a substantially nationwide basis" (39 C.F.R. §3001.82); in short, Complainants, who are general delivery customers of the United States Postal Service via the Lindale, Texas Post Office, ask that the Commission require the Postal Service to provide them with indefinite general delivery service. The Postal Service contends

¹By a separate January 12 letter, the Commission requested the General Counsel's assistance in providing documents to Complainants, who were threatened with cessation of the general delivery service that they had been receiving. The undersigned counsel thereafter notified Commission staff that Complainants would continue to be afforded general delivery service during the pendency of this proceeding, and was advised that no further response to the January 12 request was necessary.

that the subject matter of the Complaint does not fall within the scope of 39 U.S.C. § 3662 or any other grant of jurisdiction to the Postal Rate Commission. Moreover, the Complaint fails to state a claim for which the Commission could grant relief and requests relief which the Commission lacks authority to order. Although the Postal Service answers the factual allegations in the Complaint below, and moves for dismissal on the grounds of mootness, it does not intend thereby to waive its right to seek dismissal of this proceeding on these jurisdictional grounds should such a motion prove appropriate or necessary.

A brief summary of the facts, while not strictly called for as part of an Answer, nonetheless facilitates understanding of this situation. Complainants recently relocated to the Lindale, Texas area and arranged for general delivery service through the post office located there. General delivery service today is intended as a temporary means of free delivery. See Domestic Mail Manual (DMM) § D920.1.1 ("General delivery is intended primarily as a temporary means of delivery"). This change conforms with implementation of Group E (\$0 fee) post office box service for customers ineligible for the other free, permanent delivery option: carrier delivery. Thus, after a couple months of general delivery service when local postal officials inquired whether Complainants had a physical address to which carrier delivery might be provided (and which is necessary to qualify for post office box service – see DMM § D910.2.3), those officials were acting in conformity with current policies and procedures. Complainants, whose understanding of postal services is evidently rooted in pre-Reorganization Act times, object to providing any physical address and assert an entitlement to permanent general delivery service.

Two bases for denying Complainants indefinite general delivery service have, at various times, been posited by postal officials: indefinite use of general delivery service

when it is supposed to be temporary (sometimes characterized as violating the 30-day limit found in the applicable regulation), and burdensome accumulation of mail. With respect to the former, Complainants correctly argue both that the 30-day limit applies to retention of specific mailpieces rather than as a limit on the duration of general delivery service, and that delivery to persons with no fixed address is an exception to the usual rule that general delivery service is temporary. With respect to the mail accumulation problem, the current postmaster has concluded that Complainant's mail accumulation does not warrant termination of general delivery service.² Accordingly, the Postal Service can no longer rely upon either reason for denying Complainants indefinite general delivery service.³

In justifying Complainants' request for indefinite general delivery service, the Complaint points to a 1994 *Postal Bulletin* notice regarding delivery service to persons with no fixed address. *Postal Bulletin* 21877 (September 29, 1994) at 7 (copy attached as the last page to the Complaint).⁴ Postal headquarters has determined that, but for possible mail accumulation problems, this policy continues to control Complainants' situation. Accordingly, the Postal Service is agreeing to continue providing general delivery service to Complainants, thereby providing the ultimate relief sought by

²The officer-in-charge of the Lindale Post Office has recently been replaced by a permanent postmaster.

³Complainants correctly point out that the mail accumulation problem was not the initial basis cited for denying indefinite general delivery service. However, much as the postmaster's judgment on this issue differs from that previously rendered by the officer-in-charge, it remains a valid concern that must be evaluated in light of future mail volume. The postmaster indicates that he will suggest to Complainants more frequent pick-up of mail should that prove appropriate in the future.

⁴This notice addresses what is commonly referred to as delivery service to the homeless. Evidently, postal officials in Lindale have less experience with this problem than their colleagues in other, generally larger, cities. The Postal Service affirms that the notice accurately reflects current policy, and expects that a new *Postal Bulletin* notice will be issued to clarify that the Special Services Reform case did not alter it.

Complainants and rendering the Complaint moot.

ANSWER

The Complaint consists of nine pages of unnumbered paragraphs, accompanied by nine unlabeled attachments.⁵ Pursuant to Rule 84 of the Rules of Practice and Procedure of the Postal Rate Commission (title 39, Code of Federal Regulations §3001.84), the Postal Service answers each paragraph of the Complaint as follows:

Paragraph 1

The first paragraph simply identifies by name the three Complainants; the Postal Service considers this sentence procedural and not requiring a response. Insofar as an answer is deemed necessary, the Postal Service hereby denies paragraph 1.

Paragraph 2

The second paragraph appears to be Complainants' statement of jurisdiction, not factual allegations to which an answer is required. Insofar as an answer is deemed to be necessary, the Postal Service hereby denies that the Commission has jurisdiction to hear the subject matter of the Complaint or to grant the relief requested therein.

Paragraph 3 ["Nature of the Complaint"]

This paragraph appears to describe Complainants' actual and prospective damages, and is accordingly denied. Moreover, as indicated above, the Postal Service has determined to continue providing general delivery service to Complainants, so no

⁵The attachments consist of: 1) an affidavit (attesting to personal knowledge of facts contained in the complaint and to the scale of the mail accumulation problem); 2) Complainants' November 12, 1998 letter addressed to the Lindale postmaster; 3) the Postal Service response to (2); 4) a copy of DMM § D930 (that appears to be current although it lacks any Issue or other date indication); 5) Complainant's November 26 letter responding to (3); 6) copies of two Domestic Return Receipts; 7) Complainant's November 26 letter to the Postal Service General Counsel; 8) the Postal Service response to (7); and 9) a copy of the 1994 *Postal Bulletin* notice regarding delivery to persons with no fixed address.

future damages can arise.

Paragraph 4

This paragraph alleges and argues the existence of a conspiracy involving postal officials to deny Complainants access to their mail. The Postal Service denies the existence of any such conspiracy and considers that legal arguments do not warrant an answer. The Postal Service further pleads that the Commission lacks jurisdiction to hear complaints regarding obstruction of mail, and that the identified postal employees at all times acted in conformity with applicable law, policy and procedure; the sole possible exception to this latter statement has to do with the interaction among the temporary nature of general delivery service, the 30-day limitation, and the policy of greater tolerance for the needs of homeless persons.

Paragraph 5 ["Controversy"]

This paragraph alleges that the Postal Service threatens to discontinue provision to Complainants of general delivery service at the Lindale Post Office. The Postal Service admits that such a threat was made, and made properly, but denies that any such threat continues to be made.

Paragraph 6

This paragraph consists of legal argument regarding Commission authority to entertain and act upon the Complaint. The Postal Service denies that the Commission has the appropriate authority to consider the Complaint or to ordain the requested relief.

Paragraph 7 ["Past History"]

This paragraph appears to be procedural in nature, simply referencing attachments to the Complaint. The Postal Service lacks sufficient information to determine whether the attached copies of correspondence are true and correct, so to the extent an answer is required, facts in this paragraph are denied. However, the

Postal Service admits that for purposes of the Commission's consideration of mootness, it can deem the correspondence to be true and correct copies.

Paragraph 8

Paragraph 8 quotes a section of the Postal Reorganization Act, to which no answer is required, then argues that the Postal Service meets its universal service obligation through four means of delivery and that the Postal Service must deliver mail as addressed unless instructed otherwise. The Postal Service admits that it employs the four identified means of delivery. However, the Postal Service denies that it must deliver general delivery mail addressed to a customer of the United States Postal Service who fails to comply with the regulations regarding that mode of delivery. Pleading further, the Postal Service notes that its provision of delivery services constitutes a sovereign function, unbounded by contract law, and that the terms and conditions of respective delivery options are prescribed by postal regulations that have the force and effect of law. *See, e.g.*, 39 C.F.R. § 111.1 (incorporating the DMM by reference into the Code of Federal Regulations).⁶

Paragraph 9

This paragraph consists largely of legal argument, including characterization of actions by postal officials as arbitrary and capricious, plus unfathomable (and perhaps self-contradictory) assertions regarding Complainants' status as citizens, residents and travelers. This paragraph also describes one complainant as a doctor without an active practice yet claims the Postal Service may be liable for failure to delivery mail related to her medical practice.

The legal arguments are fallacious, and insofar as required, denied. The Postal

⁶It is therefore conceivable that a customer could become ineligible for any kind of delivery by consciously deciding not to accept the terms under which delivery service is provided.

Service lacks sufficient knowledge to permit an answer to the status and description of Complainants, so to the extent necessary, those allegations are denied. The Postal Service further denies that Complainants have any First Amendment rights to receipt of mail in violation of postal regulations, at least on the alleged facts of this situation, and denies that it has any liability for failure to deliver mail as addressed when such delivery is not in conformity with postal regulations.

Paragraph 10 ["USPS Legal Opinion"]

This paragraph recites Complainants' understanding of the involvement of a postal attorney, his correspondence with Complainants, and the two reasons posited for denying Complainants indefinite general delivery service. The Postal Service admits that it has variously cited a supposed 30-day limit on the provision of general delivery service and mail accumulation problems in its dealings with Complainants. Moreover, it admits that the first of these reasons was based upon a misunderstanding of the applicable regulation, and that it has made a new determination that the mail accumulation problem does not presently warrant termination of general delivery service to Complainants. The Postal Service categorically denies having "whined" to Complainants about anything. The Postal Service affirmatively pleads that mail accumulation can warrant termination of general delivery service, as provided in postal regulations.

Paragraph 11

This paragraph alleges further details of Complainants' interaction with and responses to postal employees; the Postal Service lacks sufficient information to admit these allegations, and they are accordingly denied. The Postal Service specifically denies that its employee misrepresented the truth about a determination regarding mail accumulation; postal regulations provided her with the authority to make a subjective

determination, which she properly made. Notwithstanding, that employee's successor has now exercised his discretion to make a different determination.

Paragraph 12

This paragraph alleges detail of Complainants' interactions with a postal employee, specifically actions that the employee did not take; the Postal Service lacks sufficient information to admit these allegations, and they are accordingly denied.

Paragraph 13 ["Discussion"]

This paragraph contains legal arguments regarding the effect of postal regulations that do not warrant a response.

Paragraph 14

This paragraph appears to consist of legal argument regarding application of postal regulations to the facts of this situation. Insofar as an answer is required, this paragraph is denied.

Paragraph 15 ["Arbitrary and Capricious"]

This paragraph consists of a quotation of one subsection of the Postal Reorganization Act, alleges that postal employees "felt compelled to lie", asks questions, and questions the exercise of discretion by postal employees regarding the degree of mail accumulation. The Postal Service specifically denies both that employees "felt compelled to lie" or did lie at any time when dealing with Complainants. Moreover, the Postal Service asserts that postal regulations compel local employees to exercise their discretion regarding when mail accumulation becomes problematic, and that such discretion has been exercised properly in this situation. Insofar as necessary, other allegations in this paragraph are also denied.

Paragraph 16

This paragraph asks questions, including one calling for a legal conclusion, and asserts that mail accumulation is not an issue if mail is returned to senders. The Postal Service does not understand that the questions or legal argument, if any, warrant any response. The Postal Service admits that mail accumulation would rarely be a problem if mail were being returned.

Paragraph 17 ["Delegated Authority"]

This paragraph argues that the officer-in-charge, or acting postmaster, acted without authority in dealing with Complainants. The Postal Service admits that at the time in question, Ms. Todd was the officer-in-charge, and asserts further that she at all pertinent times acted with the full authority of a postmaster. The Postal Service denies that any specific affirmative act of the Postmaster General is required to install an employee in a postmaster position. The legal argument in this paragraph otherwise does not warrant a response.

Paragraph 18

This paragraph speculates about the purpose of DMM § D930.1.2b [apparently mis-numbering it as D390], asserts that it is not intended to be used as a tool of discrimination, and asserts the innocence of Complainants. The speculation does not warrant a response by the Postal Service. The Postal Service further states that its regulations affecting general delivery service have the force and effect of law, that they do discriminate among customers on the basis of their compliance with regulations, and that such discrimination is not "undue". The Postal Service denies that guilt or innocence of any party could, should, or must be addressed in this proceeding.

Paragraph 19 ["Volume of Mail"]

This paragraph alleges details regarding the Lindale Post Office, and of

Complainants' mail accumulation. The Postal Service lacks sufficient information to formulate a detailed response to these allegations, and they are accordingly denied. Notwithstanding, Complainants' allegation that the Lindale Post Office must necessarily provide general delivery service since their mail is co-mingled with that of other postal delivery customers asserts a cause/effect relationship that need not exist, since co-mingling can arise for other reasons. However, if true, this allegation illustrates the operational difficulties inherent in general delivery service and why it is therefore generally available only as a temporary delivery option.

Paragraph 20

This paragraph contains observations of Complainants which the Postal Service has insufficient information to admit; they are accordingly denied except that the characterizations of Mr. Kessler's letter appear to be accurate. Insofar as any further response to this paragraph is required, it is denied.

Paragraph 21

This paragraph relates Complainants' understanding of what is meant by "volume" and facts underlying their receipt of mail. The Postal Service has insufficient information to permit formulation of a specific response to these statements, and they are accordingly denied. The Postal Service pleads further that its regulations empower postmasters (and those acting in their stead) to determine what volume creates an operational concern in light of the unique conditions found in a specific office, and that such empowerment is legal, appropriate and proper.

Paragraph 22

This paragraph asserts that Complainants are unable to control volume, since it is controlled by mailers. The Postal Service specifically denies this allegation, since the pertinent measure of volume in this situation is that accumulating in the general delivery

section of the Lindale Post Office addressed to Complainants, and Complainants can control the accumulation of volume through the frequency with which they pick up their mail.

Paragraph 23 ["Dealing with Absurdity"]

This paragraph asserts that no mail accumulation problem could arise were Complainants to accept rural carrier delivery, and that the Postal Service appreciates mail volume because it generates more profit; this paragraph also argues that certain postal employees violate Board of Governors' policy via their actions affecting Complainants. The Postal Service denies that Complainants could avoid the need to attend to a mail accumulation problem indefinitely were they to use a rural delivery receptacle; moreover, were Complainants to permit mail addressed to a rural delivery receptacle to accumulate unduly, the result would be return of the mail -- the same outcome that would result from termination of general delivery service. The Postal Service admits that it generally encourages mail volume, but in light of the statutory breakeven requirement, denies that the purpose of volume is to generate profits. Complainants' legal arguments do not warrant a response.

Paragraph 24

This paragraph alleges that no volume problem can arise with rural delivery service, and that such accumulation is no different from that arising from general delivery service. The Postal Service admits that there are some similarities, and asserts further that mail accumulation in any form creates extra workload that interferes with the basic mandate of delivering the mail. The Postal Service further pleads that mail accumulation problems with rural delivery receptacles may also result in the return of the mail.

Paragraph 25

This paragraph likens general delivery service to firm holdout service. The Postal Service denies both that the two are usefully comparable, and that firm holdout service provides a useful context for evaluating compliance with the terms and conditions of general delivery service.

Paragraph 26

This paragraph consists of legal argument that the actions of postal employees amount to a scheme to defraud. Insofar as necessary, the Postal Service denies these allegations. Moreover, the Postal Service denies that the Commission has jurisdiction under which to consider Complainants' charges.

Paragraph 27

This paragraph consists of allegations that postal employees bore "abusive intent" with respect to Complainants. These allegations are denied.

Paragraph 28

This paragraph consists of legal argument and *ad hominem* invective that do not warrant a response. Notwithstanding, insofar as deemed necessary, all allegations of this paragraph are denied.

Paragraph 29 ["Specific Relief"]

This paragraph consists of seven enumerated requests for relief consisting of supposed remedies from perceived personal slights, publication by the Commission of new guidelines, invalidation of a postal regulation, and interim injunctive relief, followed in the alternative by a request that the Commission direct the Lindale Post Office to afford general delivery service to Complainants. The Commission is empowered to provide none of the forms of requested relief; however, the Postal Service itself has determined to continue providing general delivery service to Complainants via the

Lindale Post Office. The Complaint is thereby rendered moot and should be dismissed.

The Postal Service denies all other allegations of material fact which have not been answered specifically herein.

In accordance with Rule 84(b) and (c) of the Rules of Practice and Procedure of the Postal Rate Commission, the Postal Service further states as follows:

1. The Complaint in this proceeding alleges improper threatened denial of general delivery service for Complainants at the Lindale Post Office. For reasons addressed in the Introduction and Background section, above, the Postal Service has agreed to continue provision of general delivery service to Complainants at that office.

2. General Delivery service is listed as a means of delivery in Domestic Mail Classification Schedule (DMCS) §2010, with its terms and conditions specified in DMM §D930.

3. The Complaint does not raise an issue concerning whether the provision of general delivery service to Complainants contravenes the policies of the Postal Reorganization Act on a substantially nationwide basis, within the meaning of 39 C.F.R. § 3001.82. Rather, by its very terms, the Complaint raises “an individual, localized, or temporary service issue not on a substantially nationwide basis,” within the meaning of that section. Because the Complaint fails to raise a matter of policy to be considered by the Commission within the meaning of 39 U.S.C. § 3662, as implemented by 39 C.F.R. § 3001.82, the Complaint could be dismissed.

4. The Postal Service considers that a hearing on this Complaint is not necessary.

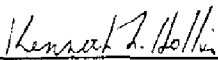
WHEREFORE, the United States Postal Service respectfully requests that this proceeding be dismissed.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux
Chief Counsel
Ratemaking

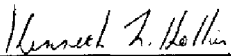


Kenneth N. Hollies
Attorney

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

Douglas Ralph Saint
Patricia Ann Braun, M.D.
Jonathan Cromwell Saint
General Delivery
Lindale, TX 75771



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